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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88557; File No. SR-FICC-2020-002]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change to Amend the Government Securities Division Rulebook Relating to the Legal Entity Identifier Requirement

April 3, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 25, 2020, Fixed Income Clearing Corporation (“FICC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of a proposal to amend the FICC Government Securities Division (“GSD”) Rulebook (“GSD Rules”)³ to require: (i) each applicant to become a Netting Member and CCIT Member to obtain and provide a “Legal Entity Identifier”⁴ to FICC as part of its membership application, (ii) each Netting Member and

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Capitalized terms not defined herein are defined in the GSD Rules, available at <http://www.dtcc.com/legal/rules-and-procedures>.

⁴ A “Legal Entity Identifier” is a 20-character reference code to uniquely identify legally distinct entities that engage in financial transactions. The Legal Entity Identifier is based on the ISO 17442 standard developed by the International Organization for Standardization and satisfies the standards implemented by the Global Legal Entity Identifier Foundation. See <https://www.gleif.org/en/about->

CCIT Member to have a current Legal Entity Identifier on file with FICC at all times and to indemnify FICC for any losses and Legal Actions⁵ that arise due to the failure of a Netting Member or CCIT Member to do so, as further described below, and (iii) each Sponsoring Member to provide FICC with a Legal Entity Identifier for each of their current Sponsored Members and for each newly added Sponsored Member going forward and to indemnify FICC for any losses and Legal Actions that arise due to the failure of a Sponsoring Member to do so, as further described below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

lei/introducing-the-legal-entity-identifier-lei. FICC is proposing to add a new definition for the term "Legal Entity Identifier" in the GSD Rules, as further discussed below.

⁵ "Legal Action" (as defined below and in the proposed rule change) means and includes any claim, counterclaim, demand, action, suit, countersuit, arbitration, inquiry, proceeding or investigation before any federal, state or foreign court or other tribunal, or any investigative or regulatory agency or self-regulatory organization.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the GSD Rules to require:

(i) each applicant to become a Netting Member and CCIT Member to obtain and provide a Legal Entity Identifier to FICC as part of its membership application, (ii) each Netting Member and CCIT Member to have a current Legal Entity Identifier on file with FICC at all times and to indemnify FICC for any losses and Legal Actions that arise due to the failure of a Netting Member or CCIT Member to do so, as further described below, and (iii) each Sponsoring Member to provide FICC with a Legal Entity Identifier for each of their current Sponsored Members and for each newly added Sponsored Member going forward and to indemnify FICC for any losses and Legal Actions that arise due to the failure of a Sponsoring Member to do so, as further described below.

Background

The Office of Financial Research (“OFR”) of the U.S. Department of the Treasury has adopted a rule (“OFR Regulation”) establishing a data collection requirement covering centrally cleared transactions in the U.S. repurchase agreement (“repo”) market.⁶ This collection requires daily reporting to the OFR by “covered reporters,” which is defined to include central counterparties meeting certain criteria (i.e., clearing repurchase agreement transactions), such as FICC.

The OFR Regulation requires covered reporters, such as FICC, to submit the Legal Entity Identifier of each clearing member involved in a reportable repo transaction.

⁶ 84 FR 4975 (February 20, 2019) (hereinafter the “OFR Release”). The OFR Regulation is codified at 12 CFR Part 1610.

A Legal Entity Identifier is a 20-character, alpha-numeric code based on the ISO 17442 standard developed by the International Organization for Standardization.⁷ Each Legal Entity Identifier contains information about an entity's ownership structure.⁸

In the OFR Release, the OFR stated that the submission of Legal Entity Identifiers by covered reporters would enhance the ability of the Financial Stability Oversight Council ("Council"),⁹ Council member agencies¹⁰ and the OFR to identify potential risks to U.S. financial stability by facilitating an understanding of repo market participants' exposures, concentrations and network structures.¹¹ The OFR stated that it expects that covered reporters (such as FICC) will take all feasible steps to require that their platform participants obtain Legal Entity Identifiers so that covered reporters are in compliance with the Legal Entity Identifier requirements of the OFR's final rule.¹²

⁷ See supra note 4.

⁸ See id.

⁹ The Council was established by the Dodd-Frank Wall Street Reform and Consumer Protection Act. The Council is charged with identifying risks to the financial stability of the United States, among other things. See <https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/fsoc>.

¹⁰ The Council member agencies are the Board of Governors of the Federal Reserve System, Commodity Futures Trading Commission, Federal Deposit Insurance Corporation, Federal Housing Finance Agency, National Credit Union Administration, Office of the Comptroller of the Currency, Securities and Exchange Commission, Treasury Department and Consumer Financial Protection Bureau. See <https://www.treasury.gov/initiatives/fsoc/about/Pages/FSOC-Member-Agencies.aspx>.

¹¹ See OFR Release, supra note 6, at 4980.

¹² Id.

The implementation timeframe for the OFR Regulation is as follows:

- Subject to the third bullet point below, covered reporters were required to begin reporting all required data elements associated with specific security trades 180 days after April 22, 2019.¹³
- Subject to the bullet immediately below, covered reporters were required to begin reporting all required data elements associated with general collateral trades within 240 days after April 22, 2019.¹⁴
- If a covered reporter is able to effectuate a rulemaking through the Securities and Exchange Commission requiring each direct clearing member, counterparty and broker associated with a repurchase agreement transaction to obtain a Legal Entity Identifier and provide it to the covered reporter, the covered reporter shall begin reporting all data elements requiring a Legal Entity Identifier by the later date of its rulemaking, or 420 days after April 22, 2019.¹⁵

Proposed Rule Changes

In order to comply with the Legal Entity Identifier submission requirement in the OFR Regulation, FICC is proposing to require: (i) each applicant to become a Netting Member and CCIT Member to obtain and provide a Legal Entity Identifier to FICC as part of its membership application, (ii) each Netting Member and CCIT Member to have a current Legal Entity Identifier on file with FICC at all times and to indemnify FICC for

¹³ 12 CFR 1610.10(e)(1)(i).

¹⁴ 12 CFR 1610.10(e)(1)(ii).

¹⁵ 12 CFR 1610.10(e)(1)(iii).

any losses and Legal Actions that arise due to the failure of a Netting Member or CCIT Member to do so, as further described below, and (iii) each Sponsoring Member to provide FICC with a Legal Entity Identifier for each of their current Sponsored Members and for each newly added Sponsored Member going forward and to indemnify FICC for any losses and Legal Actions that arise due to the failure of a Sponsoring Member to do so, as further described below.

FICC proposes to add a new defined term, Legal Entity Identifier, to GSD Rule 1. FICC proposes to use the terminology of the Global Legal Entity Identifier Foundation for the definition.¹⁶

(i) *Netting Member and CCIT Member applicants*

FICC is proposing to amend Section 5 of GSD Rule 2A to require each Netting Member applicant to obtain and provide a Legal Entity Identifier to FICC as part of its membership application. The same change would be made regarding CCIT Member applicants in Section 3 of GSD Rule 3B. The proposed change would entail a re-lettering of subsections (d) and (e) of Section 3 of GSD Rule 3B. FICC is proposing to implement the changes discussed in this paragraph upon approval of this filing from the Commission.

(ii) *Netting Members and CCIT Members*

FICC is proposing to amend Section 2 of GSD Rule 3 to add language that would require each Netting Member to have a current Legal Entity Identifier on file with FICC

¹⁶ See supra note 4. The Global Legal Entity Identifier Foundation was established by the Financial Stability Board in June 2014 to support the implementation and use of Legal Entity Identifiers. The Financial Stability Board is an international body that monitors and makes recommendations about the global financial system. www.fsb.org

at all times. The same change would be made to Section 5 of GSD Rule 3B for CCIT Members. For existing Netting Members and CCIT Members, FICC is proposing to add a footnote in each case that states such members shall have 60 calendar days from the date of the Commission's approval of this filing to submit their Legal Entity Identifiers to FICC.¹⁷

FICC is also proposing to add language to Section 2 of GSD Rule 3 and Section 5 of GSD Rule 3B to provide that a Netting Member/CCIT Member shall indemnify FICC, and its employees, officers, directors, shareholders, agents, and Members (collectively, the "LEI Indemnified Parties"), for any and all losses, liabilities, expenses and Legal Actions suffered or incurred by the LEI Indemnified Parties arising from a Netting Member's or CCIT Member's failure to have its current Legal Entity Identifier on file with FICC. "Legal Action" would mean and include any claim, counterclaim, demand, action, suit, countersuit, arbitration, inquiry, proceeding or investigation before any federal, state or foreign court or other tribunal, or any investigative or regulatory agency or self-regulatory organization. FICC is proposing this indemnity because in fulfilling its regulatory obligations under the OFR Regulation, FICC would be relying upon Netting Members and CCIT Members to keep their Legal Entity Identifiers on file with FICC current.

(iii) Sponsoring Members and Sponsored Members

FICC is proposing to amend Section 2 of GSD Rule 3A to require that each Sponsoring Member submit the Legal Entity Identifiers of its Sponsored Member applicants. FICC would implement this change regarding applicants upon the

¹⁷ The proposed footnote in each case would also state that the footnote will sunset at the end of the 60-calendar day period.

Commission's approval of this filing. The proposed rule change would also add language to Section 2 of GSD Rule 3A to require that each Sponsoring Member provide FICC with a Legal Entity Identifier for each of its existing Sponsored Members such that FICC has a current Legal Entity Identifier for each such Sponsored Member at all times. For existing Sponsored Members, FICC is proposing to add a footnote that states the Sponsoring Members shall have 60 calendar days from the date of the Commission's approval of this filing to submit the Legal Entity Identifiers of their Sponsored Members to FICC.¹⁸ In order to cover new Sponsored Members, FICC is proposing to amend Section 3 of GSD Rule 3A to add that the Sponsoring Member must provide the Legal Entity Identifier of each entity it wishes to sponsor into membership as a Sponsored Member. FICC is proposing to implement the change to Section 3 of GSD Rule 3A upon the Commission's approval of this filing.

FICC is also proposing to amend Section 2 of GSD Rule 3A to include an indemnity, described above, with respect to Sponsoring Members because, akin to the Netting Members and CCIT Members, FICC would be relying on the Sponsoring Members to keep the Legal Entity Identifiers of their Sponsored Members on file with FICC current.

2. Statutory Basis

Section 17A(b)(3)(F) of the Act requires, inter alia, that the GSD Rules be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.¹⁹ FICC understands that the Council and its

¹⁸ The proposed footnote would also state that the footnote will sunset at the end of the 60-calendar day period.

¹⁹ 15 U.S.C. 78q-1(b)(3)(F).

member agencies have a significant interest in the clearance and settlement of the securities transactions cleared by FICC. As explained in the OFR Release, these parties wish to identify risks to U.S. financial stability;²⁰ monitoring of the repo market is important for financial stability monitoring because the repo market plays a crucial role in providing short-term funding and performing other functions for U.S. markets.²¹ The OFR Regulation (which includes the Legal Entity Identifier requirement) is expected to help fulfill the Council's purposes and duties in the monitoring of the repo market.²² FICC believes that the proposed rule changes (which would add the defined term "Legal Entity Identifier" to the GSD Rules and would further amend the GSD Rules to require: (i) each applicant to become a Netting Member and CCIT Member to obtain and provide a Legal Entity Identifier to FICC as part of its membership application, (ii) each Netting Member and CCIT Member to have a current Legal Entity Identifier on file with FICC at all times and to provide the indemnity described in Item II(A)1(ii) above, and (iii) each Sponsoring Member to provide FICC with a Legal Entity Identifier for each of their current Sponsored Members and for each newly added Sponsored Member going forward and to indemnify FICC as described in Item II(A)1(iii) above) would facilitate FICC's compliance with the OFR Regulation. Therefore, given the purposes of the OFR Regulation described here, FICC believes that the proposed rule changes would foster

²⁰ See OFR Release, supra note 6, at 4975.

²¹ Id.

²² Id.

cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.²³

In addition, Section 17A(b)(3)(F) of the Act requires, inter alia, that the GSD Rules be designed to protect the public interest.²⁴ The purpose of the OFR Regulation is to assist the Council and its member agencies to monitor the stability of the repo market. The stability of the repo market serves the public interest because the repo market plays a crucial role in the U.S. markets. Because the proposed rule changes would facilitate FICC's compliance with the OFR Regulation, which, in turn, serves the public interest, FICC believes that the proposed rule changes would serve to protect the public interest.²⁵

(B) Clearing Agency's Statement on Burden on Competition

FICC believes that the proposed changes to add the defined term "Legal Entity Identifier" to the GSD Rules and to further amend the GSD Rules to require: (i) each applicant to become a Netting Member and CCIT Member to obtain and provide a Legal Entity Identifier to FICC as part of its membership application, (ii) each Netting Member and CCIT Member to have a current Legal Entity Identifier on file with FICC at all times and to provide the indemnity described above in Item II(A)1(ii), and (iii) each Sponsoring Member to provide FICC with a Legal Entity Identifier for each of their current Sponsored Members and for each newly added Sponsored Member going forward and to indemnify FICC as described above in Item II(A)1(iii) could impose a burden on competition because these changes would impose a cost on firms that currently do not

²³ 15 U.S.C. 78q-1(b)(3)(F).

²⁴ Id.

²⁵ Id.

have Legal Entity Identifiers to obtain and maintain them. FICC does not believe that any burden on competition imposed by the proposed rule change would be significant because the cost to obtain and maintain a Legal Entity Identifier is relatively small,²⁶ and FICC understands that many of its members already maintain Legal Entity Identifiers for other purposes. Regardless of whether the potential burden on competition is deemed significant, FICC believes the proposed rule change is both necessary and appropriate in furtherance of the purposes of the Act. Specifically, FICC believes that any burden on competition that is created by the proposed changes would be necessary in furtherance of the purposes of the Act²⁷ because the proposed rule change would permit FICC to comply with the OFR Regulation, which ultimately would foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions by allowing the OFR to identify risks to U.S. financial stability. FICC also believes that any burden that is created by the proposed rule change would be appropriate in furtherance of the purposes of the Act²⁸ because the proposed changes would be limited to information that FICC is required to provide pursuant to the OFR Regulation.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments relating to the proposed rule changes have not been solicited or received. FICC will notify the Commission of any written comments received by FICC.

²⁶ For example, the cost to obtain a Legal Entity Identifier is \$100 from Business Entity Data BV, and the cost to renew (which is required annually) is \$80. See www.gmeiutility.org.

²⁷ 15 U.S.C. 78q-1(b)(3)(I).

²⁸ Id.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FICC-2020-002 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

All submissions should refer to File Number SR-FICC-2020-002. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The

Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FICC and on DTCC's website (<http://dtcc.com/legal/sec-rule-filings.aspx>). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FICC-2020-002 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁹

J. Matthew DeLesDernier,
Assistant Secretary.

²⁹ 17 CFR 200.30-3(a)(12).

